However, I think that *The Debtors*[8] and *In re a Debtor*[7] although not exactly in point, authorise a receiving order being made against the partner who committed the act of bankruptcy of K.M. Shaik Mohamed, though such an order cannot be made against the firm.

If the petitioning creditor so desires I will allow him to amend the petition by inserting "K.M. Shaik Mohamed a partner in the firm of" before "K. Mohamed Ibrahim & Company" in the two places where it occurs and by amending paragraph 4 to read "That the said K.M. Shaik Mohamed (a partner in the said firm of K. Mohamed Ibrahim & Company) within six months before the presentation of this petition has committed the following act of bankruptcy, namely, that he on or about the 19th day of December, 1939, gave notice that the firm of K. Mohamed Ibrahim & Co. were about to suspend payment of its debts. The date of the act of bankruptcy is the 19th day of December 1939".

If this amendment is made within five days, there will be receiving and adjudication orders against the said K.M. Shaik Mohamed.

The interim receiving order against the firm is discharged.

There will be no order as to costs.

Order accordingly.

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, J.A.

February 1, 1940.

JOSEPH D'CRUZ v. REX.

[SINGAPORE MAGISTRATE'S APPEAL No. 89 of 1939]

Post Office Ordinance (Cap. 71) s. 69—excessive sentence—inconvenience to witness irrelevant.

An appellate Court will always be unwilling to interfere with the discretion of a magistrate on the question of sentence unless the sentence is manifestly excessive or inadequate or unless the discretion has been exercised by the magistrate upon a wrong principle. In this case a charge was made against an accused of secreting a postal package and he was found guilty on such charge. No evidence to establish a case of theft was forthcoming. The magistrate sentenced the accused to 12 months rigorous imprisonment. In doing so he stated that the accused had deliberately stolen money from the postal package and he also treated it as an aggravation of the offence that by reason of the prosecution certain officials of the Post Office have had to be taken off their proper work in the Post Office to give evidence in Court.

Held, that the gravity of an offence is not enhanced by the inconvenience which may be caused to the witnesses at the trial.

Held also, that unless theft had been definitely charged and proved the magistrate had no power to assume theft by the accused and that accordingly the magistrate had exercised his discretion upon wrong grounds and that the sentence must be reduced.

MAGISTRATE'S APPEAL.

E. N. Griffith Jones (Crown Counsel) for the Crown.

A. J. Braga for appellant.

The facts and arguments sufficiently appear from the judgment.

Terrell, J.A.—The discretion of fixing a proper sentence is vested in the Magistrate who tries a case, and an Appellate Court will always be unwilling to interfere with such discretion unless the sentence is manifestly excessive or inadequate, or unless the discretion has been exercised upon a wrong principle.

The accused in the present case was found guilty of secreting a postal package, an offence punishable under s. 69 of the Post Office Ordinance (Cap. 71). The maximum penalty under that section is seven years. The section, however, includes several different offences, which may be divided into two groups:—

(a) theft or dishonest misappropriation, and

(b) secreting, destroying or throwing away, a postal package.

It is obvious that the offences under (a) are of a more serious nature than offences under (b).

In para. 4 of his grounds of judgment the learned District Judge says "Accused, a well paid officer, deliberately stole the $10 from the articles passing through his hands". It is sufficient to observe that the prosecution never charged the accused with theft, and that the evidence necessary to establish a case of theft was not forthcoming.

Then again in para. 3 of his grounds of judgment the learned District Judge says, "accused . . . . . took these two officials (Stoddart and Gurr) off their work

in the Post Office to give evidence in Court. The authority pays accused and these two officials to work in the Post Office, not to dissipate their time in fighting out a criminal case in Court".

It is however, the duty of all citizens in a civilized state to give evidence in criminal cases, if they have knowledge of the facts, at whatever inconvenience to themselves, and it was none the less the duty of officials in the Post Office to give evidence in a matter which intimately concerned the proper running of their own department. I have never before heard of a suggestion that the gravity of an offence is enhanced by the inconvenience caused to witnesses. Nevertheless in para. 7 of his grounds of judgment the learned District Judge states that this was one of the matters he took into consideration in fixing the sentence.

If the learned District Judge had not misdirected himself on these points, and had nevertheless imposed a penalty of 12 months r.i. I would not necessarily have found such a sentence to be manifestly excessive. It is clear, however, that as a result of these misdirections the learned District Judge has imposed a heavier sentence than he would have otherwise considered adequate.

The offence is certainly not one which can be met by a binding over, as was urged by appellant's counsel, even in the case of a first offender with 15 years of service. Imprisonment is the only punishment possible, but, in view of the circumstances stated above, the sentence is reduced to six months r.i.

Sentence reduced.

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.